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assistants, from the time the hearing is opened.

(b) In a postelection proceeding pursuant to section 9(c)(1) or 9(e) of the Act, in which a formal hearing is held, communications to the hearing officer, the regional director and members of his staff who review the record and prepare a draft of his report or decision, and members of the Board and their legal assistants, from the time the hearing is opened.

(c) In a postelection proceeding pursuant to section (c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to section 9(b) of the Act, in which no formal hearing is held, communications to members of the Board and their legal assistants, from the time the regional director's report or decision is issued.

(d) In a proceeding pursuant to section 10(k) of the Act, communications to members of the Board and their legal assistants, from the time the hearing is opened.

(e) In an unfair labor practice proceeding pursuant to section 10(b) of the Act, communications to the administrative law judge assigned to hear the case or to make rulings upon any motions or issues therein and members of the Board and their legal assistants, from the time the complaint and/or notice of hearing is issued, or the time the communicator has knowledge that a complaint or notice of hearing will be issued, whichever occurs first.

(f) In any other proceeding to which the Board by specific order makes the prohibition applicable, to the categories of personnel and from the stage of the proceeding specified in the order.

§ 102.129 Communications prohibited.

Except as provided in §102.130, *ex parte* communications prohibited by §102.126 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of §102.114(a).

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in

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the proceeding and adequate opportunity afforded to them to be present.

[42 FR 13113, Mar. 8, 1977, as amended at 51 FR 30636, Aug. 28, 1986; 51 FR 32919, Sept. 17, 1986]

§ 102.130 Communications not prohibited.

Ex parte communications prohibited by §102.126 shall not include:

(a) Oral or written communications which relate solely to matters which the hearing officer, regional director, administrative law judge, or member of the Board is authorized by law or Board rules to entertain or dispose of on an *ex parte* basis.

(b) Oral or written requests for information solely with respect to the status of a proceeding.

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an *ex parte* basis.

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding.

(e) Oral or written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to pending on-the-record proceedings.

(f) Oral or written communications from the general counsel to the Board when the general counsel is acting as counsel for the Board.

§ 102.131 Solicitation of prohibited communications.

No person shall knowingly and willfully solicit the making of an unauthorized *ex parte* communication by any other person.

§ 102.132 Reporting of prohibited communications; penalties.

(a) Any Board agent of the categories defined in §102.128 to whom a prohibited oral *ex parte* communication is attempted to be made shall refuse to listen to the communication, inform the communicator of this rule, and advise him that if he has anything to say it should be said in writing with copies to all parties. Any such Board agent who

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receives, or who makes or knowingly causes to be made, an unauthorized *ex parte* communication shall place or cause to be placed on the public record of the proceeding:

(1) The communication, if it was written,

(2) A memorandum stating the substance of the communication, if it was oral,

(3) All written responses to the prohibited communication, and

(4) Memoranda stating the substance of all oral responses to the prohibited communication.

(b) The executive secretary, if the proceeding is then pending before the Board, the administrative law judge, if the proceeding is then pending before any such judge, or the regional director, if the proceeding is then pending before a hearing officer or the regional director, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within 14 days after the mailing of such copies, any party may file with the executive secretary, administrative law judge, or regional director serving the communication, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Board to impose an appropriate penalty under § 102.133.

[51 FR 32919, Sept. 17, 1986]

§ 102.133 Penalties and enforcement.

(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Board, administrative law judge, or regional director, as the case may be, may issue to the party making the communication a notice to show cause, returnable before the Board

within a stated period not less than 7 days from the date thereof, why the Board should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Board may censure, suspend, or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited *ex parte* communication. However, before the Board institutes formal proceedings under this subsection, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than 7 days from the date thereof, why it should be take such action.

(c) The Board may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Board agent who knowingly and willfully violates the prohibitions and requirements of this rule.

[42 FR 15410, Mar. 22, 1977]

Subpart Q—Procedure Governing Matters Affecting Employment-Management Agreements Under the Postal Reorganization Act

§ 102.135 Employment-management agreements.

(a) *Employment-management agreements.* All matters within the jurisdiction of the National Labor Relations Board pursuant to the Postal Reorganization Act (chapter 12 of title 39, U.S. Code, as revised) shall be governed by the provisions of subparts A, B, C, D, F, G, I, J, K, L, M, O, and P of the rules and regulations insofar as applicable.

(b) *Inconsistencies.* To the extent that any provision of this subpart Q is inconsistent with any provision of title